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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1984

LUMBER AND MILL EMPLOYERS ASSOCIATION,
Petitioner,

VS.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

MILLMEN, CABINETMAKERS, INDUSTRIAL CARPENTERS UNION LOCAL NO. 550, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO;

MILLMEN, CABINETMAKERS, INDUSTRIAL CARPENTERS UNION LOCAL NO. 262, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO;

AND

MILLMEN, CABINETMAKERS, INDUSTRIAL CARPENTERS UNION LOCAL NO. 42, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,
Intervenors.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Whether the court below erred in finding that an employer association representing specific members in multi-employer collective bargaining engages in a refusal to bargain, when, prior to the inception of substantive bargaining, it provides the union with a list of employer-members represented in such negotiations by the association but denies the union's request for a list of other members who perform work of a type covered by the previous contracts between the parties and denies the union's request for a copy of the association's bylaws?

PARTIES TO THE PROCEEDINGS

Lumber and Mill Employers Association

National Labor Relations Board

Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550, United Brotherhood of Carpenters and Joiners of America, AFL-CIO

Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 262, United Brotherhood of Carpenters and Joiners of America, AFL-CIO

Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO

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Intervenors.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner Lumber and Mill Employers Association (hereinafter referred to as "Petitioner", "LAMEA" or the "Association") petitions for a writ of certiorari to review the opinion of the United States Court of Appeals for the Ninth Circuit, reported at 736 F.2d 507 (9th Cir. 1984).

This opinion, and subsequent judgment, granted enforcement of a decision and order of the National Labor Relations Board (hereinafter referred to as the "NLRB" or the "Board") which found the Petitioner in violation of §§ 8(a)(5) and (1) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 158(a)(5) and (1) (hereinafter referred to as the "Act"), and ordered that Petitioner furnish Millmen, Cabinetmakers, Industrial Carpenters Union, Locals No. 550, 262 and 42 (hereinafter referred to as the "Unions") with a copy of those portions of its by-laws which granted authority to bargain collectively for its members, and to furnish a list of the names and addresses of its members, excluding sustaining members, performing work of the type covered by the 1981-1984 collective bargaining agreement between Petitioner and the Unions.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, filed on June 27, 1984, is reproduced *infra* as Appendix A (hereinafter referred to as "App." A, pp. A-1 to A-5).

The opinion of the Court of Appeals for the Ninth Circuit granted enforcement of a decision and order of the National Labor Relations Board, reported at 265 NLRB 199 (1984). The decision and order of the National Labor Relations Board is reproduced *infra* (App. B, pp. A-6 to A-28).

JURISDICTION

The opinion of the Ninth Circuit Court of Appeals (App. A) was filed on June 27, 1984. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Sections 8(a)(1) and 8(a)(5) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 158(a)(1) and (5) provide:

> Section 8(a). It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> • • • •
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

STATEMENT OF THE CASE

A. Background Facts

In a letter to one of the Unions' representatives, dated March 8, 1981,[1] LAMEA advised the Unions of the identities of member companies that it would be representing in the, then upcoming, multi-employer 1981 mill cabinet industry master labor agreement negotiations over a contract to succeed the 1978-1981 Master Agreement. This procedure was consistent with the practices followed by the parties for two decades.

Between the March 8 letter and the first negotiating session which took place on April 15, it was discovered that one of the companies which LAMEA had indicated it would represent in negotiations had withdrawn from its membership in LAMEA, thereby necessitating a second letter, dated April 14, which constituted a corrected list. This April 14 list was hand-delivered to one of the Unions'

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[1]Unless otherwise indicated, all dates referred to herein occurred during 1981.

representatives at the opening of the first negotiating session on April 15.

Following receipt of the April 14 letter, the Unions' spokesman asked whether Petitioner represented firms on the list contained in the April 14 letter on the basis of a power-of-attorney or on the basis of LAMEA's bylaws, to which LAMEA's representative responded that it was on the basis of its bylaws. Thereafter, the Unions requested a copy of the bylaws and, additionally, a list of all Association employer-members who performed work of a type covered by the parties' previous collective bargaining agreements. LAMEA's representative responded that the April 14 list was a copy of all of the LAMEA member firms that it was representing in these particular negotiations and, as to the request for the bylaws, it would be taken under advisement.

Other than references to the one company which had withdrawn from its membership in LAMEA prior to the commencement of negotiations, the Unions raised no further questions as to the identities of member firms either in the context of whether any particular firm was to be covered by the contract under negotiation or in the context of any extant grievances. The only reason given during the April 15 negotiation session for the requested information was to "make certain that [LAMEA was] representing everyone that . . . had [been] put on the document April 14, 1981, . . . no more . . . no less." At the next negotiation session, which took place on April 24, LAMEA advised the Unions that it would not be furnishing the bylaws or the requested membership roster. As with the April 15 negotiation session, the Unions mentioned neither a specific company with

which they had a grievance nor any employer-member whose representation by the Association in negotiations was in question.

Thereafter, a series of letters was transmitted between counsel for the respective parties to the negotiations, in which LAMEA reaffirmed its position that, unless and until the requested bylaws and membership roster were shown to be relevant to the negotiations or any pending contractual dispute(s), LAMEA was denying the request for said information. LAMEA further indicated, however, that should such relevance be demonstrated, LAMEA would reconsider its position with regard to disclosing the requested information.

The Unions' correspondence reiterated the need for LAMEA's bylaws and membership roster, justifying the request by asserting that only by having such information could they verify for themselves that the firms listed in LAMEA's April 14 letter would be legally bound to the successor agreement. At no time, either during negotiations or in the subsequent correspondence, did the Unions indicate any specific companies about which they might have questions as to the binding nature of a successor contract or against whom they had any specific grievance.[2]

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[2]It is significant to note that one of the Unions' spokesmen testified at the NLRB hearing on the underlying charges that a grievance had arisen eight months later, *viz.*, February 1982, involving alleged "double-breasting" by one of the companies represented by LAMEA. It is clear that the aforesaid grievance did not exist between April and July, 1981, the period during which negotiations for the 1981-1984 labor agreement took place, and thus, any testimony concerning the difficulties of ascertaining whether certain companies were arguably covered by the successor agreement long after negotiations were concluded is irrelevant to the Unions' re-

Following the April 24 negotiations, on or about May 2, a strike against LAMEA and its employer-members was called. Thereafter, on May 27 and 29, June 18, July 23 and 29, subsequent negotiating sessions were held, the last three with the assistance of the Federal Mediation and Conciliation Service. During none of the aforesaid negotiating sessions did the Unions indicate any company against whom they had any grievance nor did the Unions express any questions about which employer-members would be covered by any agreement ultimately reached between the parties.

On July 29, LAMEA and the Unions reached an accord concerning the 1981-1984 Master Agreement. Attached to this contract as an appendix was a list of 31 employer-members bound by the Master Agreement.

B. Procedural Facts

Rather than evincing the relevancy of the requested bylaws and membership roster, on June 1, the Unions filed an unfair labor practice charge alleging that LAMEA had violated §§ 8(a)(5) and (1) of the Act by (i) refusing to submit to the Unions a copy of LAMEA's bylaws, (ii) refusing to submit a complete roster of all employer-members

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quest for LAMEA's bylaws and membership roster at the time of negotiations. In this regard, it is curious to note that, had the Unions articulated such a rationale at the time of the negotiations with regard to the specific company involved in the February 1982 dispute, they would have been in a position to raise their concern directly with the involved company, as one of said company's representatives was present at the negotiating table as a member of LAMEA's negotiating team.

who performed work similar to the type of work performed by signatory employer-members covered by the collective bargaining agreement, and (iii) conditioning bargaining on the inclusion of an unlawful "most favored nations" clause in the collective bargaining agreement. On June 27, the Unions filed an amended charge, deleting the claim LAMEA conditioned bargaining on the inclusion of an unlawful "most favored nations" clause.

On July 31, the Regional Director for Region 20 issued a complaint based on the amended unfair labor practice charge alleging that LAMEA violated the Act by refusing to furnish the Unions with "a copy of [its] bylaws; and a copy of [its] employer-members who performed work covered by the collective bargaining agreement with the Union." A hearing on the Board's complaint was held thereafter on March 30, 1982, before Administrative Law Judge (hereinafter referred to as "ALJ") Jay R. Pollack, following which, on June 2, 1982, a decision was issued, wherein ALJ Pollack concluded that (i) this matter was not moot, and (ii) LAMEA's failure to furnish the Unions with a copy of its bylaws and membership roster was a violation of §§ 8(a)(5) and (1) of the Act. Albeit reducing the scope of the information requested by the Unions, ALJ Pollack ordered that Petitioner furnish the Unions with (1) that portion of its bylaws which purportedly granted Petitioner the authority to bargain on behalf of its members and (2) a list of the names and addresses of Petitioner's members, excluding sustaining members, who performed work of the type covered by the 1981-1984 collective bargaining agreement, except for those already included in "Appendum 'A' " of the agreement.

On October 22, 1982, following its review, the NLRB adopted ALJ Pollack's ruling and recommended Order (App. B, p. A-6 to A-9). Significantly, the Board expressly disavowed any reliance by the ALJ on the Ninth Circuit's decision in *NLRB v. Associated General Contractors of California, Inc.*, 633 F.2d 766 (9th Cir. 1980), *cert. denied*, 452 U.S. 915 (1981), to the extent it was inconsistent with Board precedent (App. B, p. A-7, fn. 2).

Thereafter, on February 14, 1983, the Board requested that the Ninth Circuit Court of Appeals enforce its Order requiring Petitioner to provide the Unions with that portion of Petitioner's bylaws which authorized it to bargain collectively for its members, and its roster of members (names and addresses), excluding sustaining members, performing work of the type covered by the 1981-1984 Master Agreement between Petitioner and the Unions. On June 27, 1984, the Ninth Circuit Court of Appeals issued its Opinion wherein it ordered enforcement of the Board's Order.

REASONS FOR GRANTING THE WRIT

I

INTRODUCTION

The Ninth Circuit's ruling that the information requested by the Unions was relevant to the negotiations between Petitioner and the Unions flies in the face of well-established standards concerning the guidelines by which a union's information requests are evaluated, and thus, raises important legal issues regarding multi-employer bargaining which should be answered by this Court. Although there is authority that requires disclosure of an

employer association's membership list in the course of grievance procedures in which the union alleges the violation of a specific provision of a collective bargaining agreement (where the material is relevant to the specific violations alleged), this is the first decision by either the NLRB or by any of the Circuit Courts of Appeals where it has been held that an employer association's bylaws and membership list must be produced in the course of negotiations.

The Ninth Circuit's decision has great importance to employer associations whose membership rosters include unorganized members represented for other than collective bargaining purposes, but who may be performing work similar to that being performed by organized members of the association working under union agreements negotiated on their behalf by the association. The law of this case, if allowed to stand, would require that all members of an association be identified to a labor organization if any one of the members is represented in collective bargaining by the association. This goes far beyond the liberal discovery type of relevancy standard applicable to information requests and essentially throws open the most important and confidential books and records of an association on the pretextual claim of the union for more information. Further, this will dramatically alter the composition of existing employer associations which do a large share of the collective bargaining negotiations in the United States, because it will require them to disclose full membership lists and bylaws to any union with which it deals.

Finally, as the mutual and reciprocal promises of the membership of an association, the bylaws are the most sensitive of said organization's internal documents. Enti-

ties other than members derive no rights under the bylaws either as against the association or any of its members. Third parties derive no rights under the agreement, absent a showing that the bylaws were entered into by the members of the association expressly for that third party's benefit. The Ninth Circuit's decision, however, if allowed to stand, would require all employer associations to disclose their bylaws to any union which wished to pry into the internal affairs of the association under the erroneous premise that the bylaws (rather than the expressed consent of the parties or the Act) may give the union rights against other association members not represented by said association for collective bargaining purposes. Not only is this premise fallacious, *viz.*, that an employer association's bylaws *per se* gives a union rights as against current and/or former employer-members, but the converse proposition, that the bylaws should not be disclosed, becomes all the more compelling where there are other practical and efficient ways to obtain the information sought by the union, *e.g.*, by seeking direct verification from any individual employer-member as to who has the authority to exercise said employer's statutory bargaining rights and obligations under the Act.

As summarized above and discussed below, the ramifications of the Ninth Circuit's opinion that Petitioner must disclose its bylaws and membership list to the Unions is contrary and destructive to established guidelines for the conduct of multi-employer bargaining, and accordingly, Petitioner respectfully requests that its Petition for Writ of Certiorari be granted.

II

THE NINTH CIRCUIT'S DECISION WAS IN ERROR BY CONCLUDING THAT THE REQUESTED INFORMATION WAS RELEVANT TO THE UNIONS' ABILITY TO DISCHARGE THEIR STATUTORY BARGAINING OBLIGATIONS

It is undisputed and well-established that, where a union makes a request for information which is necessary for it to understand and intelligently discuss the issues raised in the context of bargaining for a labor contract or involves contract administration, an employer's failure to disclose said information violates the National Labor Relations Act. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Manufacturing Company*, 351 U.S. 149 (1955).

Where the requested information deals with matters pertaining to employees in the unit which goes to the core of the employer-employee relationship, said information is viewed as "presumptively relevant." *Emeryville Research Center, Shell Development Company v. NLRB*, 441 F.2d 880 (9th Cir. 1971). When the information requested is presumptively relevant, the employer has the burden of proving the lack of relevance. *Prudential Insurance Company v. NLRB*, 412 F.2d 77 (2d Cir.), *cert. denied*, 396 U.S. 928 (1969).

When, however, the requested information deals with employees outside of the bargaining unit, the employer does not violate the Act by refusing to disclose such information, until such time as the union demonstrates that such information is relevant to the effective discharge of its statutory bargaining obligations to employees within the bargaining unit. *San Diego Newspaper Guild, Local No.*

95 v. NLRB, 548 F.2d 863 (9th Cir. 1977). This showing of relevance is judged against a liberal, discovery-type standard, *NLRB v. Associated General Contractors of California, Inc.,* 633 F.2d 766, 770 (1980), *cert. denied,* 452 U.S. 915 (1981); however, the union must show more than a "mere 'suspicion' " to establish relevancy, albeit no "initial, burdensome showing" is required. *San Diego Newspaper Guild, Local No. 95 v. NLRB,* 548 F.2d 863, 868 (9th Cir. 1977).

Even when the requested information is relevant, however, it is not always a violation of § 8(a)(5) of the Act if the employer refuses to disclose it. Whether the Act has been violated by the employer's refusal to disclose the requested information is a function of the balance between the employer's reasons for non-disclosure (typically ones of privacy and confidentiality) and the union's need for the information. *NLRB v. Associated General Contractors of California, Inc.,* 633 F.2d 766 (9th Cir. 1980), *cert. denied,* 452 U.S. 915 (1981); *Emeryville Research Center, Shell Development Company v. NLRB,* 441 F.2d 880 (9th Cir. 1970).

The Ninth Circuit did not apply a presumptively relevant test to the requested information, but rather found three bases on which the Unions purportedly satisfied their obligation to demonstrate the relevancy of their request for LAMEA's bylaws and membership roster. Thus, implicitly, the Court of Appeals found that the information requested pertained to extra-unit employees, and then expressly ruled that the information requested by the Unions was relevant. While Petitioner concurs with the implicit holding that the information involved extra-unit employees, Petitioner maintains that the relevancy finding by the Court of Ap-

peals was in error on the ground that the information requested was irrelevant to the Unions' statutory obligations to its membership. Petitioner contends herein that such information would neither further the Unions' ability to administer or enforce the collective bargaining agreement nor was it linked to proposals or demands made in the course of the negotiations of a successor collective bargaining agreement. It is because the Ninth Circuit totally disregarded the application of the foregoing (heretofore well-established) standards, in addition to the absolute derogation of Petitioner's privacy interests in its bylaws and membership list, that review by the Court is necessary. Failure of the Court to review this matter will leave a large void concerning the guidelines for required information disclosure—a void which is destructive to an employer's privacy interests and, ultimately, to multi-employer bargaining.

III

THE NINTH CIRCUIT ERRED BY FAILING TO REQUIRE THE UNIONS TO SHOW THAT THEIR REQUEST FOR INFORMATION WAS MADE IN THE CONTEXT OF A SPECIFIC GRIEVANCE OR RELATED TO CONTRACT PROPOSALS

The Ninth Circuit makes two fundamental errors: first, although it correctly states that for an employer to have an obligation to disclose information, said information must first be relevant to a union's obligations to administer or negotiate a collective bargaining agreement, *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979); *NLRB v. Associated General Contractors of California, Inc.,* 633 F.2d 766 (9th Cir. 1980), *cert. denied,* 452 U.S. 915 (1981), it mistakenly found a relationship between the information re-

quested, and the Unions' ability to discharge their statutory obligations. Secondly, even if, *arguendo*, the information putatively had the potential of being of value to the Unions in discharging their statutory duties, the Court of Appeals erred in finding that the Unions had satisfied their obligation to demonstrate the immediate relevancy of the requested information in response to LAMEA's objections and request for an objective basis therefor.

The relevancy standard, although liberally interpreted, has a substantive reference point when it is grounded upon a specifically alleged violation of an existing contract. If, for example, the employer can establish that the union has no standing to bring such a grievance, *e.g.*, that it is time barred by the contract terms, the union's request fails the relevancy test, and the information need not be disclosed notwithstanding that the union may have other purposes in mind in seeking it.

In the instant case, the Ninth Circuit found that "the . . . union's fear that the member employers might be operating non-union shops at secondary locations in violation of the agreement" (App. A, p. A-4), as one of the three bases upon which the Petitioner's bylaws and membership roster were relevant to the Unions' specific needs. Arguably, if a violation of this type occurred prior to the termination of the expiring agreement and was not time barred under the provisions of that agreement, the Unions would have the right to file and pursue such a grievance (even if their pursuit occurred during the course of negotiations), as well as seek information about a specific employer's purported violation of a specific provision of the contract. *NLRB v. Hebert & Co.*, 696 F.2d 1120 (5th Cir.), *cert. denied*, —— U.S. ——, 104 S.Ct. 76 (1983); *Lapp*

Air Conditioning, 270 N.L.R.B. No. 100 (1984) (employer violated § 8(a)(5) of the Act when it refused to provide information regarding suspected double-breasting operations after the union has demonstrated the relevance of the inquiry); *Hawg-N-Action,* 268 N.L.R.B. No. 82 (1984) (where a union obtained reliable information which indicated the possible existence of an "alter ego" dual shop operation, it had the right to seek details on that operation and its possible relationship to the signatory employer).

Here, however, the record confirms that no such grievance was being investigated or had been filed (App. B, p. A-12, fn. 5), and therefore, no preliminary determination had been made with respect to the foregoing threshold predicate. In the absence of a putatively viable grievance, there can be no reference point upon which to hinge the relevancy standard for assessing the Unions' demand for information. This being the case, the Unions had failed to establish the predicate upon which their request for the information was based.

Moreover, as the record supports, neither side made any bargaining demands upon which the Unions predicated their demands for a list of Petitioner's members and its bylaws. In order to be a viable request for information relating to negotiations, the information requested must be pertinent to a mandatory subject of bargaining, *NLRB v. Item Company,* 220 F.2d 956 (5th Cir.), *cert. denied,* 350 U.S. 836 (1955); *General Electric Company,* 184 N.L.R.B. 407 (1970), *viz.,* demands concerning the wages, hours and terms and conditions of employment of the employees represented by the union in the negotiations, and alternative avenues for access to such information must be considered

in the event the employer objects to providing it in the form requested by the union. *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979).

Therefore, since the Unions, in the instant case failed to either file a grievance concerning a contract provision or lodge bargaining demands with Petitioner concerning mandatory subjects of bargaining to which LAMEA's membership list or bylaws would be putatively relevant, the Unions' "concern," standing alone, did not satisfy the prerequisites for compelling the disclosure of that information by Petitioner. Thus, the third base of relevancy articulated by the Ninth Circuit, *viz.*, Petitioner's "membership list responded to the Union's [sic] fear that member employers might be operating non-union shops at secondary locations in violation of the agreement" (App. A, p. A-4), is inconsistent with established law and is a deviation therefrom requiring correction by the Court.

IV

THE NINTH CIRCUIT'S OPINION IGNORES THE FUNDAMENTAL PRINCIPLE THAT MULTI-EMPLOYER BARGAINING IS A MULTI-LATERAL CONSENSUAL ARRANGEMENT, AND THEREFORE, SINCE PETITIONER CONSENTED TO REPRESENT ONLY CERTAIN EMPLOYERS AT THESE SPECIFIC NEGOTIATIONS, THE UNIONS' REQUEST FOR THE PETITIONER'S BYLAWS AND MEMBERSHIP LIST WAS IRRELEVANT

In order to evaluate the relevancy of the information requested by the Unions on the first and second bases accepted by the Ninth Circuit, *viz.*, the authority of LAMEA to bargain on behalf of the employers on the

April 14 list and the scope of the bargaining unit in these negotiations, it is necessary to more fully explore the essence of multi-party bargaining. The statutory framework of the Act only envisioned a single employer individually bargaining with the exclusive bargaining representative of its employees. Although the Act was not so designed, it has been interpreted to accommodate multi-party bargaining where the parties therein consent to such a bargaining structure. *Detroit Newspaper Publishers Association v. NLRB*, 372 F.2d 569 (6th Cir. 1967); *Retail Associates, Inc.*, 120 N.L.R.B. 388 (1958). Here, there is no dispute that LAMEA and the Unions consented to engage in multi-employer/multi-union bargaining as they had for over two decades.

The reciprocal constituent memberships of a multi-employer bargaining unit entity are likewise established by consent. Whether, or if, an employer (or local union) is a member of a multi-employer (or multi-union) bargaining unit is strictly a consensual matter. *Van Eerden Company*, 154 N.L.R.B. 496 (1965); *Kroger Co.*, 148 N.L.R.B. 59 (1964).

The individual employer's consent to become a part of a multi-employer bargaining entity is, however, but one-third (or one-fourth where local unions are bargaining as a joint council) of the equation. In addition to the employer's consent, the multi-employer bargaining representative must agree to bargain for the individual employer within a multi-employer bargaining structure, and likewise, the union (or joint council) must consent to bargain with that employer within the multi-employer framework. *Western States Regional Council No. 3 v. NLRB*, 398 F.2d 1770 (D.C. Cir. 1968); *Local 49 Sheetmetal Workers*, 122 N.L.R.B. 1192 (1959). Given the foregoing, it is clear that LAMEA's by-

laws and membership roster would in no way be relevant in aiding the Unions in determining the scope of the bargaining unit and the identity of employers "contractually bound to negotiate through the Association" (App. A, p. A-4). Further, such information could not add or detract from the scope of the bargaining unit consented to by the Association.

Prior to the onset of negotiations, LAMEA presented the Unions with a complete list of those employers whom LAMEA elected to represent in negotiations of a successor labor contract to the 1978-1981 Master Agreement. In submitting the list to the Unions, LAMEA stated quite plainly and unequivocally, that the list constituted the scope of the employer bargaining unit it chose to represent at the bargaining table. It could not have done so more clearly nor could the Unions have defined the scope of the bargaining unit any more definitively, whether they had received the requested bylaws and membership roster or not. Moreover, even if the bylaws indicated that the Association had the authority to represent other employers not on the list, the Unions would have no standing to enforce those members' rights against the Association and force the Association to consent to a broader bargaining unit.

The Ninth Circuit, in error, however, found that the Unions' request for Petitioner's bylaws and membership lists were relevant because the Unions wished to determine whether past members belonging to the Association "were still contractually bound to negotiate through the Association" (App. A, p. A-4). Whether former LAMEA members, who, at the time of negotiations were bargaining with other organizations, were contractually bound to negotiate through Petitioner is not a matter that the Unions had

standing to raise as a basis for demanding the information sought.

While the proposition that an employer somehow becomes bound to bargain with the Unions through Petitioner in these negotiations by virtue of that employer's membership in the Association is superficially attractive, such a proposition lacks merit because it is unsupported and contrary to underlying well-established law which provides no basis for equating Association membership with representation in multi-employer bargaining. *Detroit Newspaper Publishers Association v. NLRB,* 372 F.2d 569 (6th Cir. 1967); *Van Eerden Company,* 154 N.L.R.B. 496 (1965); *Kroger Co.,* 148 N.L.R.B. 59 (1964). Moreover, an alleged breach of the non-represented Association member's contractual obligation to negotiate through the Association is not a claim which the Unions have standing to raise, as they are third parties, lacking privity with that agreement (LAMEA's bylaws). This being the case, the Unions' desire to determine the status of former Association members *vis-à-vis* the Petitioner cannot serve as a justification for requiring the Association to disclose the membership list and the by-laws.

Whether the Association is honoring or failing to honor any contractual commitment it may have under the bylaws to represent one or more of its members in collective bargaining is strictly a matter between the Association and its members. There simply is no statutory or interpretive federal labor law (or, for that matter, any other law of which Petitioner is aware) that permits a union to enforce an employer association's promise to represent an association member in any specific negotiations. Similarly, there is no law that permits the union to enforce an employer association member's right to be represented in negotiations con-

ducted by said association. Neither of those matters, while potentially involving the breach of rights and obligations between the employer and its representative, provide the union with any standing to claim any breach of its statutory or contractual rights with the association or the individual member.

Fundamentally, the scope and composition of the multi-employer bargaining unit prior to the onset of substantive bargaining is a completely consensual matter requiring the affirmation of all parties. Notwithstanding the individual association member's preference or its rights under the by-laws, the employer association may elect not to represent the individual member at the bargaining table. Should the employer association's refusal to do so be contrary to the provisions of the bylaws, it becomes putatively answerable to the individual member for the association's failure to proceed according to the bylaws, but the association is not answerable to the union or any other party for its alleged breach of the bylaws. Similarly, should the individual member refuse to respect its obligation to be represented by the employer association in collective bargaining, the employer association, on behalf of its other members, may enforce the rights against the recalcitrant member, but no other third parties, including the union, would have standing to enforce those rights. *NLRB v. Teamsters 378*, 672 F.2d 741 (9th Cir. 1982).

It is fallacious, therefore, to assert, as is implicit in the Ninth Circuit's holding, that Petitioner's membership list or bylaw provisions were relevant to these negotiations for the foregoing purposes. To do so would provide the Unions with an avenue to unilaterally determine the scope of the employer bargaining unit and thus destroy the consensual underpinning of multi-employer bargaining.

Given the multi-lateral consent required for multi-party bargaining, the foregoing propositions become patently obvious when viewed within the following hypothetical context: an employer's association represents many of the employers in a particular industry. According to its bylaws, by belonging to the association, the employer-member grants the association the authority to represent it in its collective bargaining matters. Prior to the commencement of negotiations over a successor master agreement, the employer association indicates that, for these negotiations, it represents one-half of the employers which belong to the association, submitting to the union prior to the commencement of negotiations a list of those employers which it elects to represent in these negotiations. That the employer association might have the authority to bargain collectively on behalf of the other half of its constituent membership is of no moment to the union's ability to define the scope of the unit which the association consents to represent in bargaining. This is so even if a particular employer may have been bound to the predecessor labor contract. Thus, having a copy of the employer association's bylaws or membership roster would not aid the union in defining the scope of the unit for which negotiations are taking place, as it could not possibly lead, even under a "discovery" standard, *NLRB v. Associated General Contractors of California, Inc.*, 633 F.2d 766 (9th Cir. 1981), to any information which would aid the union in determining the scope of the bargaining unit.

To take this hypothetical situation one step further, it may very well be that the employers that are not named on the list supplied by the employer association have an obligation to the other members of the association to bar-

gain with the union. Whether those employers meet their bargaining obligation, however, is totally irrelevant to the original definition of the scope of the bargaining unit by the employer association's determination of who it will be bargaining for in any specific negotiations with the union.

The facts in the foregoing hypothetical situation are not unlike the ones in the instant case. Even if there were other employers which may have had a bargaining obligation but which were not on the April 14 list, the scope of the bargaining unit had been defined by the consent of the Association as manifested by names on the April 14 list. The scope extended no further, and thus, any request for the bylaws or membership roster for the reasons articulated by the Unions in negotiations and the Ninth Circuit, *viz.*, to help the Unions determine the scope of the bargaining unit or "whether former Association members now bargaining through other organizations were still contractually bound to negotiate through the Association" (App. A, p. A-4),[3] was totally irrelevant to that inquiry. Therefore,

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[3]In its decision, the Ninth Circuit indicated that one of the reasons the information requested by the Unions was relevant was the Unions' desire to determine whether former LAMEA members allegedly bargaining through new employer representatives were still contractually bound to negotiate through Petitioner. It is clear that this rationale, without more, is wholly without foundation, since the Unions would have no use for this information in the context of these negotiations. For this rationale to make sense, albeit Petitioner maintains still in error, it must be implied that the aforesaid information could then be converted into a demand by the Unions that such employers as may be on the membership list which do work of the type covered by the collective bargaining agreement which were not on the April 14 list of employers represented by LAMEA in these negotiations would thereafter be bound by whatever labor contract may have emerged from negotiations between LAMEA and the Unions, regardless of the reciprocal consent of the parties.

the record evidence is clear that the Unions did not meet their burden of demonstrating that their request for the Association's bylaws and membership roster were relevant to determining the scope of the bargaining unit, and therefore, the Ninth Circuit erred by finding to the contrary.

The foregoing example also illustrates the fundamental multi-lateral consensual arrangement of multi-employer bargaining. Assume, prior to the onset of the first substantive negotiation session and after providing the union with a list of the employers the association would be representing in the negotiations, that the union challenged the list of individual association members which the association desired to represent in multi-employer bargaining with the union. Assume further that the basis of the union's challenge was that the list omitted one or more individual employer-members who had been former members of the association but who were currently bargaining through other organizations in which they then claimed membership. The association's response would likely be, as it was in the instant case, that, in the multi-employer bargaining at issue, it only sought to represent the individual members whose names appeared on the list submitted to the union, and that it was not seeking the unions' consent to the association's representation of any other employers, whether former members of the association or otherwise.

Thus, having withheld its consent to the inclusion of any employers not shown on the Association's list, and limiting its consent to the inclusion of only those employers listed within the multi-employer bargaining unit, the Unions and the Association effectively decided the scope and composition of the bargaining unit being represented in the negotiations once substantive negotiations began, and neither

had any obligations to the other with respect to employers outside of the bargaining unit which they had mutually agreed upon. It would therefore be disingenuous for the Unions to claim that its negotiations with the Association could have any binding effect upon employers excluded from the consensual bargaining unit agreed to between itself and the Association.

Moreover, should it be the Unions' desire that the Association represent former members in multi-employer bargaining so as to contractually bind them as well as current members, and should the Association decline to do so, the Unions could have simply withheld their consent to the multi-employer bargaining unit proposed by the Association unless such former members were included. Since both the Unions and the Association enjoy the unrestricted right to refuse to consent (for any reason or no reason) or to agree to the composition of the multi-employer unit proposed by one or the other, the Unions expose themselves to no liability whatsoever by withholding their consent to a multi-employer bargaining unit that fails to include former employer-members or any other employer.

The fundamental fallacy in the Ninth Circuit's decision that the requested information was relevant is that the Association's duty to bargain with the Unions and the scope and composition of the bargaining unit which it represented in such multi-employer bargaining is unregulated by the Act, and at all times prior to the onset of substantive negotiations between the parties, is purely determined by the multi-lateral consent of the individual employer, the Association, and the Unions. Once consent has been granted as to an agreed upon multi-employer bargaining unit and sub-

stantive negotiations commence, under well-established principles of federal labor law, then, and only then, do statutory rights attach to the collective bargaining relationships. *Bonanno v. NLRB*, 454 U.S. 404 (1982) (after multi-employer negotiations have commenced, absent extraordinary circumstances, individual employers may not withdraw without the consent of both the employer association and the union). Since the Unions' demands were lodged with the Association prior to the onset of substantive negotiations, the Unions can claim no statutory rights as against the Association. Similarly, while the Unions may have underlying statutory rights that are exercisable against an individual employer under §§ 7 and 8 of the Act, these rights do not pertain to Petitioner until consent has been given and substantive bargaining commenced.

In summary, then, the Unions can neither compel the Association to represent former members regardless of the provisions of LAMEA's bylaws, nor are the Unions exposed to claims by the former employer-member that the employer was represented in such negotiations notwithstanding the absence of the Unions' consent thereto. Since the bylaw provisions which authorize LAMEA to bargain on behalf of its members cannot increase or decrease the Unions' rights with respect to former Association members nor create unconsented-to obligations, this rationale, as articulated by the Ninth Circuit, cannot serve as a lynchpin upon which to predicate relevancy for purposes of forcing disclosure of the bylaws and membership list of the Association.

V

THE NINTH CIRCUIT'S RULING FAILS TO RECOGNIZE THAT PETITIONER'S BYLAWS CANNOT BIND MEMBER FIRMS TO THE TERMS OF A NEW MASTER AGREEMENT WITHOUT THE CONSENT OF ALL PARTIES TO THE MULTI-LATERAL ARRANGEMENT

The remaining reason advanced by the Ninth Circuit as a basis upon which to find relevancy for the Unions' requests for LAMEA's bylaws and membership list was that the Unions ". . . wanted to establish for itself that the bylaws would legally bind member firms to the new Master Agreement" (App. A, p. A-4). Like its companion rationale, this reason is also fallacious.

It is well-established that, prior to the onset of substantive collective bargaining, neither individual employers nor unions are statutorily required to negotiate with each other on a multi-employer basis absent their mutual consent. *Detroit Newspaper Publishers Association v. NLRB*, 372 F.2d 569 (6th Cir. 1967); *Retail Associates, Inc.*, 120 N.L.R.B. 388 (1958). The corollary to this proposition, also well-established, is that once substantive negotiations commence, the individual employer, the association and the union are required to bargain with each other with respect to the agreed upon multi-employer unit for the duration of the agreement, *Retail Associates, Inc.*, 120 N.L.R.B. 388 (1958) (withdrawal from multi-employer bargaining unit must be timely, written and unequivocal), unless there has been timely withdrawal by one or more of the parties, or unusual circumstances exist, *Hi-Way Billboards*, 206 N.L.R.B. 22 (1973), such as extreme financial circumstances, *Atlas Electrical Service Company*, 176 N.L.R.B. 827 (1969)

(compliance with the multi-employer agreement would have caused the employer to cease operations) or a fragmentation of the bargaining unit. *Typographical Service Company,* 238 N.L.R.B. 1565 (1970) (test is whether the union and a sufficient number of individual employers have reached separate agreements so as to defeat the purposes of multi-employer bargaining).

Even assuming that the Unions herein harbored well-founded anxieties as to whether individual Association employer-members were properly or improperly included or excluded from the lists supplied to them by the Association prior to the onset of substantive negotiations, the simple and often utilized expedient for resolving such doubt is a request by the Unions for the Association to produce or the individual employer to execute, a writing which clearly and unequivocally states that it is solely and exclusively represented by the Association in the subject negotiations. As a practical matter, neither the Association's bylaws nor the Association's list of members participating in the negotiations could offer the same level of assurance to the Unions since they are produced and executed by the Association, rather than the individual member, and would bear the taint of being self-serving. Indeed, regardless of what the bylaws said, it is only by an unequivocal articulation of an employer's consent that said employer becomes bound by multi-employer bargaining, and said consent is not necessarily evidenced merely by the existence of a formal delegation. *Western States Regional Council No. 3 v. NLRB,* 398 F.2d 1770 (D.C. Cir. 1968); *Local 49 Sheetmetal Workers,* 122 N.L.R.B. 1192 (1959).

Therefore, the Ninth Circuit's rationale that the bylaws were relevant because they would provide evidence that

Petitioner's employer-member firms were legally bound to the new Master Agreement was erroneous. The binding nature of the new Master Agreement and the statutory rights attendant thereto, flow from the representations made between the parties prior to the onset of substantive negotiations, the consent given or withheld in response to such representations by the parties thereafter, and the onset of actual substantive negotiations. This scheme is well-established and is completely independent of any bylaw provisions that regulate the affairs of the Association members *inter se;* rather, such bylaw provisions merely support or disclaim any such bargaining obligations, not give rise to substantive rights as to the Unions.

CONCLUSION

Wherefore, based on the foregoing, Petitioner Lumber and Mill Employers Association respectfully requests that its Petition for a Writ of Certiorari be granted.

Dated this 24th day of September, 1984.

Respectfully submitted,

CASSEL & ABRAHAM

By A. K. ABRAHAM
Counsel of Record

By ROBERT M. CASSEL

Attorneys for Petitioner,
Lumber and Mill
Employers Association

Appendix A

United States Court of Appeals
For the Ninth Circuit

No. 83-7117

National Labor Relations Board,
Petitioner,
and
Millmen, Cabinetmakers, Industrial Carpenters Local No. 550, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Millmen and Industrial Carpenters Local No. 262, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and Millmen, Cabinetmakers and Industrial Carpenters Union Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO,
Intervenors,
v.
Lumber and Mill Employers Association,
Respondent.

[Filed June 27, 1984]

OPINION

On Application for Enforcement of An Order of the National Labor Relations Board
Argued and Submitted April 10, 1984

Before: SNEED and FLETCHER, Circuit Judges, and BURNS,* District Judge.

SNEED, Circuit Judge:

*Honorable James M. Burns, United States District Judge for the District of Oregon, sitting by designation.

Petitioner National Labor Relations Board (Board) applies for enforcement of its order finding that Lumber and Mill Employers Association (Association) violated sections 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. §§ 158(a)(5) and (1), by refusing to provide Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550 (Union) with a membership roster and a copy of its bylaws. We order enforcement.

I.

FACTS

Between April and July, 1981, the Union and the Association negotiated for a successor to their 1978-1981 "Master Agreement." At the inception of these negotiations, the Association provided the Union with a list of 52 companies it would be representing for purposes of the new agreement. The Union thereafter requested a complete list of Association members, including firms that had contracted with other unions but performed the type of work covered by the collective bargaining agreement. The Union also requested a copy of the Association's bylaws, which set forth the terms made binding on member employers of the Association. The Association refused both requests. On July 29, 1981, the two parties signed a Master Agreement for 1981-1984. The addendum to the agreement listed 31 companies which were bound to the new contract.

The Union filed an unfair labor practice charge against the Association over its refusal to provide the requested information. The Board held that the Association had violated sections 8(a)(5) and (1) of the Act and ordered

the Association to furnish the Union with (1) a copy of the portions of its bylaws that grant it authority to bargain collectively for its members and (2) a list of Association members who performed the type of work covered by the parties' 1981-1984 agreement and were not already included in the addendum to the agreement.

II.

DISCUSSION

An employer has an obligation to furnish information relevant to a Union's negotiation or administration of a collective bargaining agreement. *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979); *NLRB v. Associated General Contractors, Inc.,* 633 F.2d 766, 770 (9th Cir. 1980), *cert. denied,* 452 U.S. 915 (1981). A "liberal, discovery-type standard" is used to determine what constitutes relevant information. *Associated General Contractors,* 633 F.2d at 770 (citing *NLRB v. Acme Industrial Co.,* 385 U.S. 432, 437 (1967)). In establishing relevance the Union must offer more than "mere 'suspicion,'" but no "initial, burdensome showing" is required. *San Diego Newspaper Guild v. NLRB,* 548 F.2d 863, 868 (9th Cir. 1977). The Board's determination on this issue is given "great weight" on review "either because it is a finding of fact, which is conclusive if supported by substantial evidence, or because it is a finding on a mixed question of law and fact which is within the expertise of the Board." *NLRB v. Associated General Contractors,* 633 F.2d at 770.

Applying the "liberal, discovery-type standard," substantial evidence supports the Board's finding that the requested information was relevant. The Association was

the sole negotiator for member firms, and its members were bound to its agreements by virtue of its bylaws. Membership in the Association had decreased substantially in recent years, and several companies that had been bound to the previous Master Agreement were contracting through new agents. Given these facts, portions of the Association's bylaws and membership roster were relevant to three specific Union needs. First, the Union wanted to establish for itself that the bylaws would legally bind member firms to the new Master Agreement. Second, the Union wished to determine whether former Association members now bargaining through other organizations were still contractually bound to negotiate through the Association. The large decrease in the number of firms party to the 1981-1984 agreement justified the Union's concern that perhaps some non-signatory firms remained members of the Association and hence should have been bound to the new agreement. Finally, the membership list responded to the Union's fear that member employers might be operating non-union shops at secondary locations in violation of the agreement. To support this contention, the Union had pointed to a member firm with one listed address, but two business locations. Under these circumstances, substantial evidence supports the Board's finding that the items ordered to be provided were relevant to Union needs.

The Association also contends that providing the list of signatory members appended to the 1981 agreement responded fully to the Union's request for information and mooted this case. We disagree. During negotiations the Union set forth its reasons for requesting a copy of the

bylaws and a membership roster. These reasons included the fact that the Union was interested in using the bylaws to uncover possible "double-breasting" by member firms and to determine whether firms not listed in the addendum to the 1981 agreement might nonetheless be bound by the agreement. The addendum to the 1981 agreement would not serve this purpose adequately. This case is not moot.

ENFORCEMENT ORDERED.

Appendix B

Lumber and Mill Employers Association *and* Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550; Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters Union Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 20-CA-16290

October 22, 1982

DECISION AND ORDER

By Members Fanning, Jenkins and Zimmerman

On June 2, 1982, Administrative Law Judge Jay R. Pollack issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed limited exceptions[1] and an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the

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[1]In response to the General Counsel's exceptions, we shall modify the recommended Order to include a description of the collective-bargaining unit and shall also modify the notice to specify the information to be furnished the Unions upon request.

Administrative Law Judge and to adopt his recommended Order, as modified herein.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Lumber and Mill Employers Association, San Mateo, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Substitute the following for paragraph 1(a):

"(a) Refusing to bargain collectively with Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550; Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters Union Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by refusing to supply the above-mentioned Unions with requested information which is relevant to their functions as the exclusive bargaining representatives of employees in the following appropriate unit:

> All employees covered under the terms of the 1981-1984 collective bargaining agreement between Lumber and Mill Employers Association and Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550; Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters

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[2]We disavow any reliance by the Administrative Law Judge on the court of appeals decision in *N.L.R.B. v. Associated General Contractors of California, Inc.*, 633 F.2d 766 (9th Cir. 1980), to the extent that that decision is inconsistent with Board precedent. See *Iowa Beef Packers, Inc.*, 144 NLRB 615, 616 (1963).

Union No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO."

2. Substitute the following for paragraph 1(b):

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

Notice to Employees
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT refuse to bargain collectively with Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550; Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters Union Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by refusing, upon request, to furnish information which is necessary and relevant for the Unions' use in negotiating, policing, and administering collective-bargaining agreements as the exclusive bargaining representative of employees in the following appropriate unit:

All employees covered under the terms of the 1981-1984 collective bargaining agreement between Lumber and Mill Employers Association and Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550; Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters Union No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, furnish the Unions with a copy of those portions of our bylaws which grant us authority to bargain collectively for our members, and a list of the names and addresses of our members, excluding sustaining members, performing work of the type covered by the parties' 1981-84 agreement and not already included in "Appendum A" of the 1981-84 agreement.

LUMBER AND MILL EMPLOYERS ASSOCIATION

DECISION

Statement of the Case

JAY R. POLLACK, Administrative Law Judge: I heard this case in San Francisco, California, on March 30, 1982. Based upon an unfair labor practice charge filed on June 2, 1981,[1] and an amended charge filed on July 28 by Millmen, Cabinetmakers; Industrial Carpenters Union Local No. 550;

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[1]Unless otherwise stated, all dates hereafter refer to the year 1981.

Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters Union, Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Unions), the Acting Regional Director for Region 20 of the National Labor Relations Board issued a complaint and notice of hearing on July 31 against Lumber and Mill Employers Association (Respondent). The complaint alleges in substance that Respondent—acting in its capacity as a multiemployer bargaining representative—violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by refusing to furnish the Unions with the following requested information: a copy of Respondent's bylaws and a copy of Respondent's roster of employer-members who perform work covered by its collective-bargaining agreement with the Unions.

All parties were given full opportunity to appear, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Based upon the entire record and from my observation of the demeanor of the witnesses, I make the following:

Findings of Fact and Conclusions

I. Jurisdiction

Respondent is a multiemployer association composed of employers engaged in the milling of lumber and the manufacture of lumber-related products, which exists for the purpose, *inter alia*, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Unions.

During calendar year 1980, the employer-members of Respondent purchased and received at their California facilities goods and materials valued in excess of $50,000 from other enterprises located within the State of California, each of which other enterprises received the said goods and materials directly from points outside the State of California. Accordingly, it admits, and I find, Respondent to be an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. Labor Organizations

The complaint alleges, the answer admits, and I find that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. *The Facts*

As discussed above, Respondent is a multiemployer association which represents employers engaged in the milling of lumber and the manufacture of lumber-related products. The Unions and Respondent have been party to a series of collective-bargaining agreements covering the employees of Respondent's employer-members, the most recent of which is effective from May 1, 1981, to May 1, 1984.[2] The instant case arose during the negotiation of the 1981-84 agreement.

Prior to the expiration of their 1978-81 agreement, Respondent and the Unions commenced negotiations for a

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[2]I find the following unit appropriate for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act:

All employees covered under the terms of the 1981-84 collective-bargaining agreement between Respondent and the Unions.

succeeding agreement.[3] By letter dated March 8, prior to the first negotiation session, Respondent submitted to the Unions a list of 53 employers whom Respondent purported to represent in the upcoming contract negotiations. On April 14, a second letter was prepared, which letter deleted the name of one company from the list of employers represented by Respondent. The April 14 letter was handed to the Unions' representatives at the parties' first negotiation session on April 15.

At the April 15 session, Victor Van Bourg, attorney for the Unions, asked whether Respondent represented firms on the above list on the basis of a power of attorney or on the basis of Respondent's bylaws. Frederick W. Misakian, Respondent's executive vice president, responded that it was on the basis of Respondent's bylaws. Van Bourg responded by requesting a copy of Respondent's bylaws and a list of all employer-members of Respondent who performed work under the contract. Van Bourg indicated that this request was based upon the *AGC* case.[4] Van Bourg noted that one listed employer, Higgins Lumber Company, was only listed at its San Francisco location, although it also had a location in Hayward, California.[5] Misakian told Van Bourg that Re-

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[3]Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 2095 was also a party to the 1978-81 agreement. However, that local union was not party to the 1981 negotiations nor the 1981-84 agreement.

[4]*Associated General Contractors of California*, 242 NLRB 891 (1979), enfd. as modified 633 F.2d 766 (9th Cir. 1980). Van Bourg represented the charging parties in the *AGC* case.

[5]No serious discussion of Higgins Lumber's two locations took place during contract negotiations. However, there is currently a pending grievance concerning the application of the agreement to Higgins Lumber's Hayward location.

spondent represented the firms based on its bylaws and that he would discuss Van Bourg's request for the bylaws with Respondent's attorney. Misakian told Van Bourg, "We certainly are hopeful of reaching an agreement, but we want to tell you that a strike against one would be deemed a strike against all." Van Bourg asked if Misakian really meant that a strike against one was a strike against all. Misakian answered yes and Van Bourg responded, "You are telling me a strike against one is a strike against all, but you won't tell me who 'all' is."[6] Misakian said that he would take the matter under advisement and discuss it with Respondent's attorney.

The parties met again on April 24. At the beginning of this meeting, Van Bourg reiterated his request for Respondent's bylaws and a complete list of Respondent's employer-members. Van Bourg again stated that he was relying on the *AGC* case. Van Bourg told Misakian that the Unions were not sure of the identity of Respondent's members and that employer-members had apparently withdrawn from membership in Respondent and joined other multiemployer associations. Further, Van Bourg expressed the concern that some companies were operating on a nonunion basis,

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[6]Misakian testified that Respondent has three categories of membership: regular members, service members, and sustaining members. Regular members are those for whom Respondent provides labor relations services, such as contract negotiations and representation in grievance matters. According to Misakian, service members are not represented in labor relations matters but subscribe to Respondent's bulletins and participate in its workers' compensation and group health insurance programs. Sustaining members are persons or firms that give gratuitous contributions to Respondent. Misakian was not familiar with the identity of the sustaining members. According to Van Bourg, the Unions were not aware of the different categories of membership.

which companies the Unions believed were connected in some manner with members of Respondent. Van Bourg told Misakian that in past negotiations the Unions had always received a complete list of Respondent's membership.[7] With regard to the bylaws, Van Bourg said the Unions wanted to make their own determination as to whether the bylaws in fact bound employer-members to the negotiations. Misakian responded that, based on advice of counsel, Respondent would not be furnishing the Unions with the requested bylaws or membership roster.

On April 29, Robert M. Cassel, Respondent's attorney, wrote Van Bourg stating, *inter alia:*

> . . . since there is no issue in negotiations to which the information you are seeking appears to be relevant nor any dispute with respect to such information, LAMEA is declining, at this time, to furnish it to the above union.
>
> If, however, the information you request becomes arguably relevant to the negotiations or to any pending contractual disputes between the parties, LAMEA will reconsider its denial of your request and advise you accordingly.

On April 30, Van Bourg wrote Cassel alleging that Misakian had given Cassel incorrect information regarding the request for information. Van Bourg then stated that, in view of the changes in Respondent's membership and staff, he had requested Respondent's bylaws and a list of Respondent's members not on the list submitted by

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[7]Misakian had become Respondent's executive vice president in March and, therefore, was involved as Respondent's chief negotiator for the first time.

Misakian. Van Bourg further stated that he had fully explained the relevance of the Unions' request to Misakian.

On May 2, the Unions commenced a strike against C. Markus Hardware, listed as a firm represented by Respondent in the lists of March 8 and April 14.[8] Further negotiation sessions took place on May 27 and 29 and June 18. At the June 18 session, Van Bourg repeated his request for a complete list of Respondent's members and for a copy of Respondent's by-laws. Misakian reaffirmed Respondent's refusal to supply the information.

On June 23, Van Bourg wrote Cassel stating the following reasons for the Unions' request for Respondent's by-laws and a list of all those members who perform work covered by the agreement whose names were not present on the previously submitted lists:

> 1. There has been tremendous fluctuation in the identity of members of LAMEA with many defections, many employers quitting, some members advising they were not members even though they were on the Roster and contained on the original LAMEA Roster given.
>
> 2. I specifically asked whether members of LAMEA would be bound to the Agreement by virtue of a power of attorney or the By-Laws. We were told they would be bound by virtue of the language of the By-Laws, that is, by an agreement between the LAMEA member and LAMEA and its members. We are entitled to know what the language is that you believe binds them so we can verify it for ourselves legally. In other words, we must be able to determine whether that language is sufficient to bind them to the negotiations or whether

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[8]C. Markus Hardware was not included as a member firm in the 1981-84 agreement.

we might face a situation under which we execute an Agreement and have numerous employers trying to walk away from the Agreement that does not bind them.

3. There are approximately 150 [sic] LAMEA members on the Roster which was not given to us until almost the expiration date of the contract. It would be impossible under those circumstances, and still is impossible, to verify membership.

4. It is obvious that the Roster of employer firms is also important to determine problems such as double-breasting,[9] avoidance of contract and to determine questions of interpretation and application of the contract.

We are not asking for names of members who do not perform work in the industry; we are only asking for the names of those employers who do perform work in the industry whose names do not appear on the Roster. We are not aware of different classes of mem-

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[9]See *AGC*, 242 NLRB at 892, fn. 5:

The term double-breasted is used to describe contractors who operate two companies, one unionized and the other nonunionized or open-shop. Depending on the underlying facts and circumstances of each case, the employees of both constituent companies may be held to constitute a single appropriate bargaining unit or the employees of each may be held to form separate units. In the former case, the collective-bargaining agreement covering the employees of the unionized firm may be held to cover the employees of the nonunion firm as well; or the employer may be ordered to bargain on behalf of both firms with the union which had represented the unionized portion of such a double-breasted operation. See, for example, *Don Burgess Construction Corporation*, 227 NLRB 765 (1977); *R. L. Sweet Lumber Company*, 207 NLRB 529 (1973), enfd. 515 F.2d 785 (10th Cir. 1975), cert. denied 423 U.S. 986.

bers in the LAMEA By-Laws and for that reason it is also important that we see the By-Laws as well as the Roster.

We are asking for those precise reasons which were ruled germane in the AGC case, and we are not trying to go beyond the AGC case.

On July 10, Cassel answered Van Bourg's letter, denying the relevancy of the requested information. Cassel again took the position that, if the requested information became "genuinely relevant" to the issues raised in negotiations or contractual grievances between Respondent and the Unions, Respondent would furnish "whatever information it possessed that was relevant to the scope of the specific issues raised." On July 20, Van Bourg wrote Cassel alleging that Cassel had misconstrued the Unions' request and that Misakian had not given Cassel the correct facts.

In late July, the parties reached agreement on the 1981-84 collective-bargaining agreement. Respondent requested that the Unions withdraw the instant unfair labor charge. However, the Unions refused to withdraw the charge and continued to request the subject information. The preamble to the 1981-84 agreement contains the following language:

PREAMBLE

This Agreement is made and entered into by and between the Lumber and Mill Employers Association, representing and on behalf of those of its member firms in the counties of Alameda, Contra Costa, Marin, San Benito, Santa Clara, San Francisco, and San Mateo whose employees are legally represented by one of the signatory Unions (firms bound by this Agree-

> ment at the date of the signing are listed on the applicable addenda, and firms subsequently joining the Association whose employees are legally represented by the Union shall come under this Agreement upon notice to the appropriate Union from the Association that such firm has become a party to this Agreement), each of said firms being hereinafter referred to as the Employer and Millmen Locals 42, 262, and 550, affiliated with the Bay Counties District Council of Carpenters or the Santa Clara Valley District Council of Carpenters, each of which are affiliated with the Millmen's 46 Counties Conference Board, chartered by the United Brotherhood of Carpenters and Joiners of America, each of said Local Unions being hereinafter referred to as the Union. The geographical application of this Agreement shall be extended to other counties in Northern California in accordance with the provisions of Section 1 hereof or otherwise by agreement of the parties hereto.

Attached to the agreement as "Appendum 'A'" is a list of the names and addresses of 31 employer-members of Respondent bound by the agreement.[10]

B. *Contentions of the Parties*

The General Counsel contends that the requested information is presumptively relevant to the Unions' perform-

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[10]As noted, at the commencement of the negotiations there were 52 employers listed by Respondent. It appears that during the negotiations certain employers signed interim agreements with the Unions, and, as a result, were expelled from membership in Respondent. No other explanation for the decrease in employer membership appears in the record.

ance as exclusive bargaining representative and, in the alternative, that the information is potentially relevant to the Unions' performance of negotiation and enforcement of its bargaining agreement. In any event, the General Counsel contends that the Unions demonstrated the relevancy of the requested information and, therefore, that Respondent violated Section 8(a)(5) and (1) of the Act by not furnishing the information to the Unions.

Respondent first contends that the issue is now moot because the parties agreed in their 1981-83 agreement to the identity of those employers bound to the contract. Thus, Respondent argues that the agreement "answers the Unions' articulated need for the requested information." Second, Respondent argues that the Unions failed to establish the relevancy of the requested information and, therefore, that Respondent had no obligation to furnish the requested information.

C. *Analysis and Conclusions*

It is well settled that an employer has a statutory obligation to provide a union, on request, with relevant information the union needs for the proper performance of its duties as a collective-bargaining representative. *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); *Detroit Edison Co. v. N.L.R.B.*, 440 U.S. 301 (1979). In determining whether an employer is obligated to supply particular information, the question is only whether there is a "probability that the desired information [is] relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *N.L.R.B. v. Acme*

Industrial Co., supra at 437. As the Supreme Court has stated the disclosure obligation is measured by a liberal "discovery-type standard not a trial-type standard, of relevance. *Ibid.* Where the requested information deals with information pertaining to employees in the unit which goes to the core of the employer-employee relationship, said information is "presumptively relevant." *Emeryville Research Center, Shell Development Company, a division of Shell Oil Co. v. N.L.R.B.*, 441 F.2d 880 (9th Cir. 1971). Where the information is presumptively relevant, the employer has the burden of proving the lack of relevance. *Prudential Insurance Company of America v. N.L.R.B.*, 412 F.2d 77 (2d Cir. 1969). "[B]ut where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower . . . and relevance is required to be somewhat more precise. . . . The obligation is not unlimited. Thus where the information is plainly irrelevant to any dispute there is no duty to provide it." *Ohio Power Company*, 216 NLRB 987, 991 (1975); *Doubarn Sheet Metal, Inc.*, 243 NLRB 821, 823 (1979). Thus, where the requested information deals with matters outside the bargaining unit, the union must establish the relevancy and necessity of its request for information. *San Diego Newspaper Guild, Local No. 95 of the Newspaper Guild, AFL-CIO, CLC* [*Union-Tribune Publishing Co.*] *v. N.L.R.B.*, 548 F.2d 863 (9th Cir. 1977).

The *AGC* case also involved multiemployer/multiunion bargaining. In that case, the Carpenters requested that the AGC supply complete membership rosters. The Board found that one of the principal reasons for the request was the Carpenters fear that the AGC's actions had fostered

growth in the number of open-shop employers and the volume of nonunion construction, and that, as a result thereof, some employer-members of the AGC had attempted to escape their contractual obligations by creating double-breasted or *alter ego* operations. Thus, the Carpenters needed the information to facilitate inquiry into the question whether some of AGC's open-shop members were, in fact, bound by the AGC-Carpenters collective-bargaining agreement. The AGC had determined, entirely by itself, that the open-shop members were not bound by the collective-bargaining agreement notwithstanding that they had some element of common ownership and/or common officers with firms bound by the contract. The Board found that the Carpenters was entitled to have equal access to the same data so that they could intelligently evaluate the facts and, thereby, reach their own conclusions on whether or not to pursue remedies for possible contract violations to seek provisions in the contracts under negotiation which would serve to preserve the integrity of their respective bargaining units. The Board concluded by finding that the information sought was relevant and necessary to the Carpenters administration of their bargaining agreement, to the intelligent assessment of the advisability of filing grievances or taking other remedial action, and to the formulation of related bargaining proposals in the then-pending negotiations.

The Court of Appeals for the Ninth Circuit found that the information requested by the Carpenters Union was not presumptively relevant and, thus, the union had the initial burden to show relevancy. The court found that the evidence of an increase in open-shop members, AGC spon-

sorship of seminars on conversion to open shops, and common ownership of some union and open-shop contractors established the relevancy of the requested information. The court then found that it was not necessary for the Carpenters to show actual violations of the contract:

> It is sufficient that the information sought is relevant to possible violations where the union has established a reasonable basis to suspect such violations have occurred. Actual violations need not be established in order to show relevancy. [633 F.2d at 771.]

The court further found that it was not essential that the information fully resolve the question whether a contract violation had occurred. It was sufficient under a liberal discovery standard that the roster would aid in the Carpenters investigation of contract violations. The court found that the record established the relevancy of a roster of open-shop and open-shop specialty members only and it, therefore, modified the Board's order to include only those membership classifications. The Board had ordered AGC to furnish the Carpenters with its full membership list.

Applying the above legal principles to the instant case, it appears that the identity of the members of Respondent was a real concern of the Unions. Van Bourg expressed the concern that there had been a change in the membership of Respondent. Former members of Respondent had joined other bargaining groups. Misakian indicated that Respondent's claim of representation was based on its bylaws. Van Bourg requested the bylaws so that the Unions could make their own determination as to whether the bylaws were sufficient to bind a member to the agreement being negotiated. Misakian put the identity of the employer-members in issue

when he stated that "a strike against one was a strike against all." Van Bourg requested information so that the Unions could make their own determination of who constituted "all." During negotiations the identity of the employer-members was still very much a live issue as Respondent's membership decreased from 66 in the 1978-81 agreement, to 52 at the start of negotiations, and finally to 31 at the time the agreement was reached.

In his correspondence, Van Bourg asserted that the information was relevant to the Unions' determination of problems such as double-breasting, avoidance of the contract and application of the contract. Apparently this argument has two points: (1) members of Respondent not listed in the agreement may be bound to the agreement by virtue of the bylaws; and (2) members of Respondent may be obligated to apply the agreement to locations other than those listed in the agreement. As noted above, since the filing of the instant charge, the Unions have filed a grievance concerning the application of the agreement to a second location of Higgins Lumber Company.

Under these circumstances, I find that, during the negotiations, the bylaws and membership list of Respondent were relevant to the Unions' determination of the identity of the employer-members of Respondent which was itself necessary in order to determine the scope of the bargaining unit. The exchange of a broad range of information would seem to further the statutory policy of facilitating meaningful collective bargaining. *Press Democrat Publishing Co. v. N.L.R.B.*, 629 F.2d 1320, 1325 (9th Cir. 1980). See also *San Diego Newspaper Guild, supra* at 548 F.2d at 866-867; *Proctor & Gamble Mfg. Co. v. N.L.R.B.*, 603 F.2d 1310,

1315 (8th Cir. 1979). The alternative having the Unions question each employer whether it would be bound by the agreement, is simply not effective nor conducive to a stable collective-bargaining relationship. In addition, during the life of the agreement, under the rationale of *AGC, supra,* the requested information is relevant to the Unions' intelligent assessment of the advisability of filing grievances or taking other remedial action regarding the nonapplication of the agreement to certain members or certain locations of member-employers of Respondent.

The question remains as to whether the refusal to furnish the bylaws and membership roster has become moot by virtue of execution of the 1981-84 bargaining agreement. While the agreement on its face appears to put to rest the question of the identity of Respondent's employer-members, I do not consider the case moot.[11] Respondent does not contend that the Unions waived their right to the information. The Unions clearly indicated that the agreement did not resolve their need for the information. Rather, Respondent contends that the information is no longer relevant. I reject Respondent's arguments for two reasons. First, Respondent's refusal to furnish the information, upon demand, has not been remedied. Respondent should not profit by its delay in furnishing the relevant information during negotiations. Second, the Unions still seek the information for its probable and potential use in determining the advisability of grievances or other action over the

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[11]In labor cases, cessation of the challenged conduct does not assure that the underlying controversy will not be reopened or that the challenged conduct will not reoccur. *The Edward J. DeBartolo Corporation* v. *N.L.R.B.*, 662 F.2d 264, 267, fn. 2 (4th Cir. 1981); see also *N.L.R.B.* v. *Raytheon Co.*, 398 U.S. 25 (1970); *Pet, Incorporated* v. *N.L.R.B.*, 641 F.2d 545, fn. 1 (8th Cir. 1981).

nonapplication of the agreement to certain firms or locations. Evidence of a contract violation is not essential; it is sufficient under a liberal discovery standard that the bylaws and roster would aid in the Unions' investigation of possible contract violations.

I find nothing in the record which privileges Respondent's failure to provide the relevant information. There is no evidence that the Unions' request was not made in good faith. Disclosure of the relevant portions of the bylaws or the membership roster would not impose an onerous burden on Respondent. Finally, Respondent has proposed no practicable alternative to disclosure. Accordingly, I find that Respondent's refusal to furnish relevant information requested by the Unions was violative of Section 8(a)(5) and (1) of the Act.

IV. The Remedy

Having found that Respondent engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act.

As mentioned above, in the *AGC* case, the Court modified the Board's Order and ordered the AGC to furnish a roster of open-shop and open-shop specialty members rather than a full membership roster. Thus, a narrow order will be recommended here. Accordingly, Respondent will be ordered, upon request, to furnish the Unions with the requested information heretofore found relevant and necessary to contract negotiations and contract administration, specifically (1) a copy of those portions of Respon-

dent's bylaws which purportedly grant Respondent authority to bargain collectively for its members; and (2) a list of the names and addresses of Respondent's members, excluding sustaining members, performed work of the type covered by the parties' 1981-84 agreement and not already included in "Appendum 'A'" of the 1981-84 agreement.

Conclusions of Law

1. Respondent Lumber and Mill Employers Association is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Unions, Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550; Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters Union, Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are labor organizations within the meaning of Section 2(5) of the Act.

3. By refusing to furnish the above-named Unions with information necessary and relevant to the negotiation and administration of their collective-bargaining agreement with Respondent, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[12]

The Respondent, Lumber and Mill Employers Association, San Mateo, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Millmen, Cabinetmakers, Industrial Carpenters Union Local No. 550; Millmen and Industrial Carpenters Local No. 262; and Millmen, Cabinetmakers and Industrial Carpenters Union, Local No. 42, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, by refusing to supply relevant information upon request.

(b) In any like or related manner violating Section 8(a)(5) and (1) of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Furnish, upon request, to said Unions a copy of the relevant portions of its bylaws and the names and addresses of its employer-members, as more fully explained in the remedy section of this Decision.

(b) Post at its offices, and at the offices of all its employer-members, copies of the attached notice marked "Ap-

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[12]In the event no exceptions are filed as provided by Sec. 102.48 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

pendix."[13] Copies of said notice on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent and by each of its employer-members immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employer-members' employees are customarily posted. Reasonable steps shall be taken by Respondent and its employer-members to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

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[13]In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."